

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
DIVISION OF JUDGES

CATERPILLAR, INC.

and

INTERNATIONAL UNION, UNITED AUTOMOBILE,  
AEROSPACE AND AGRICULTURAL IMPLEMENT  
WORKERS OF AMERICA AND ITS LOCAL 751

Case Nos. 33-CA-10559  
33-CA-10563  
33-CA-10610  
33-CA-10743  
(Cat II – Hale, Morrell,  
Schott and Syfert)

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DECISION

STEPHEN J. GROSS, Administrative Law Judge. These cases are about whether Caterpillar discriminated against four employees whom Caterpillar employed at its Decatur facility because of the employees' union activities. The four: Rod Hale, Randy Morrell, Morris Schott and George Syfert.<sup>1</sup>

I. ROD HALE

The complaint in Case 33-CA-10610 alleges that Caterpillar “engaged in physically and verbally provocative, abusive and threatening conduct towards Union Committeeman Rod Hale because Hale was engaging in Union activities.”<sup>2</sup>

A. HALE ARRIVES AT BUILDING D

The events in question occurred on September 20, 1993. Hale had long participated actively in Local 751's affairs, including the Union's campaign against Caterpillar. Hale sometimes led union rallies at the Decatur facility. At least one of the Union's publications – the “Contract Action Times” – quoted Hale in that regard. In February 1993 the Local's membership had

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<sup>1</sup> The four cases (33-CA-10559, 10563, 10610, and 10743) had been consolidated into Cat II. But by order dated March 22, 1996, I granted the General Counsel's motion to sever these four cases from Cat II for briefing and decision.

<sup>2</sup> In this decision “the Union” means the UAW International and its Local 751.

elected Hale to be a committeeman. Management knew that Hale was one of the “more active” members of Local 751.<sup>3</sup>

Hale's particular jurisdiction as a committeeman covered the machine shop areas in three of the buildings in Caterpillar's Decatur facility. Hale frequently conferred about union business with the union stewards in those areas.

On September 20, at about 12:50 p.m., Hale entered Building D for the purpose of discussing union business with a steward, Jerry Madding, over whom Hale had jurisdiction. (The discussion concerned an on-the-job altercation between two union members.) Hale made it a practice, when entering a work area, of checking with the area's supervisor if, but only if, it was convenient for Hale to do so. Hale knew that Madding was supervised by John Skaggs. Hale did not see Skaggs and accordingly proceeded directly to Madding. As it happens, Skaggs was not at work that day, and Madding was temporarily being supervised by foreman Jerry Cunningham.

Neither the 1988 collective-bargaining agreement nor the Implemented Proposal<sup>4</sup> provides for any breaks for employees (apart from lunch time). Nonetheless supervisors permit employees to take two daily breaks in addition to lunch. (Management calls them “personal time,” rather than “breaks.”) For day-shift employees, one of these breaks starts at 1 p.m. The length of these breaks varies, supervisor by supervisor. Some supervisors permit employees to take only a few minutes off, some specifically permit employees to take breaks as long as 15 minutes, and some do not specify the length of the break but simply call the employees back to work when the supervisors consider that a reasonable amount of break time has passed. But at Decatur no supervisor permits breaks in excess of 15 minutes.

As 1 p.m. approached, Hale and Madding moved toward some vending machines and then sat down at a table that employees used as a place to gather during their breaks. Five other employees joined Hale and Madding at the table. Of all the employees present, Hale represented only Madding. But at least some of the employees in addition to Madding knew Hale to be a committeeman and engaged him in discussion about union matters generally, matters such as where Caterpillar and the Union “were on the contract, whether or not the International Union had been in contact with the Local Union lately . . . things of that nature.”<sup>5</sup> (Hale discontinued talking with Madding about the subject that brought him to Madding in the first place because it involved a matter that could not appropriately be discussed publicly.)

#### B. GODDARD ARRIVES

That was the situation when Plant Superintendent James Goddard arrived on the scene. As the superintendent of Building D, Goddard supervised about a dozen foreman and hundreds of employees. (Goddard's actions on two subsequent occasions were at issue in two of the *Bulletin Board* cases, 33-CA-10718 and, especially, 33-CA-10744. In JD-101-96 I concluded that Caterpillar, by Goddard's actions – among those of other supervisors, violated Section 8(a)(1) of the Act.<sup>6</sup>)

<sup>3</sup> The quotation is from the testimony of John Kuester, who at all relevant times was the Decatur facility's labor relations manager.

<sup>4</sup> See, e.g., my decision in the *Second-Step Grievance Case in Cat II*, JD-161-96, at 2.

<sup>5</sup> The quotation is from Hale's testimony.

<sup>6</sup> Madding's actions also were a subject of discussion in JD-101-96 in that Madding was one of the employees who posted materials that Caterpillar unlawfully removed from bulletin boards. I note that the

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Goddard was in the general area as part of a routine walk-through. Goddard was with supervisor Cunningham (the supervisor who was serving temporarily as foreman over the area in which Madding worked). Goddard was unhappy with productivity levels. Employees, it seemed to him, were increasingly beginning their work days late, ending their work days early, and taking far more time than they should on their breaks. Goddard considered it possible that the Union's in-plant campaign was a factor in this behavior, a suspicion I consider not unreasonable for Goddard to have developed. (I discuss the Union's in-plant campaign at the end of this part of this decision.)<sup>7</sup>

Goddard saw Hale, Madding and the other employees at the table. Goddard checked his watch. It showed 1:17 p.m. By any measure, and particularly by any measure that Goddard deemed valid, the employees should have been working, not sitting. (I make no finding about whether the employees really had overstayed their break time since that depends on, among other things, when the employees had in fact begun their break and whether Goddard's watch was accurate relative to factory time. I do find, however, that – rightly or wrongly – Goddard was sure that the employees had been away from their work for more than 15 minutes and that Goddard had reasonable grounds for thinking that to be the case. In this same connection, I note that the record does not prove that the employees had been on their breaks for less than 15 minutes. Cf. *NLRB v. Burnup & Sims, Inc.*, 379 U.S. 21 (1964).)

Goddard also noticed that although Hale was Madding's committeeman, Hale did not represent of any of the other employees seated at the table.

Goddard turned to Cunningham and asked whether Hale had checked in with Cunningham when Hale had arrived in the area. Cunningham said that Hale had not done so. Goddard was of the view that committeemen should always check in with the supervisor when entering a work area. The Implemented Proposal so provides, as did the predecessor collective-bargaining agreement. Goddard knew that, as a matter of practice and with the tacit approval of management, committeemen had stopped doing that. Goddard, however, had made it his business to reinstitute the requirement in the areas that he managed.<sup>8</sup> Goddard had spoken to a number of committeemen about that, but he had not yet said anything to Hale on the subject.

Goddard decided to get the employees back to work and to use the occasion to order Hale to check in with supervisors whenever Hale entered one of Goddard's areas. Goddard told Cunningham to handle some other matters and Cunningham left the scene. Goddard headed for the table, feeling irritated and impatient about the employees at the table having overstayed their break time and about the practice of committeemen entering work areas without first touching base with supervisors. Meanwhile, one of the employees at the table whispered to

events at issue there occurred after the matters of concern here.

<sup>7</sup> I note that the Union and the General Counsel subpoenaed documents related to Caterpillar's production levels. With minor exception I granted Caterpillar's petitions to revoke in that respect. Thus the record contains little information about production levels during the period at issue. Information about production levels no doubt would be relevant to some extent to the question of whether Caterpillar management was in fact concerned about the Union's efforts to impede production in Caterpillar facilities. My granting of Caterpillar's petitions to revoke was based on my conclusion that: (1) the issue, as just indicated, was management's viewpoint, not actual production levels; (2) in that same connection, production levels would be relevant only to the extent that they were different from what ought to be expected absent the in-plant campaign – an almost impossible determination to make; and (3) the documents sought would likely be extraordinarily voluminous.

<sup>8</sup> The General Counsel does not contend that Caterpillar violated Section 8(a)(5) in this respect.

Hale that Goddard was nearby.

Goddard's plan was to speak to Hale in an aisle near the table. While the most troubling aspect of the situation to Goddard was the sight of a half-dozen employees sitting when they should have been working, the record is unclear what Goddard intended to do to get them back to work. Perhaps Goddard just assumed that as soon as he spoke to Hale, the others would scatter (which turned out to be the case). Perhaps Goddard planned to speak to Hale about the employees having overstayed their break time.

#### C. THE FLARE-UP AT THE TABLE

I am about to describe a series of interactions between Hale and Goddard. The interactions were emotionally charged, occurred within a very brief span of time, and involved physical contact and angry, loud words. Under these circumstances it is most unlikely that either Goddard or Hale or any of the other witnesses to the event even perceived the interactions entirely accurately, much less recalled them accurately. My account is based on what I believe to be the probabilities of the situation, taking into account what I came to understand of the personalities of Goddard and Hale.

Hale was seated facing away from Goddard; that is, Goddard approached Hale from behind. (The Union, unpersuasively, ascribes malevolence to the fact that Goddard approached Hale from behind.) As Goddard closed to within a foot or so of Hale, Goddard rested his hand on Hale's shoulder and said, "hey buddy, I would like to see you in the aisle." Goddard generally refers to employees by their names, rarely (if ever) by "buddy." And it is also rare for Goddard or for any other supervisor to touch an employee. The General Counsel contends that Goddard chose to use the term and to touch Hale as part of a deliberate effort to "demean" Hale.<sup>9</sup> But in fact both the use of "buddy" and Goddard's touching Hale were merely expressions of Goddard's irritation and impatience.<sup>10</sup>

Hale accurately considered Goddard's touch, tone of voice, and use of the word "buddy," instead of Hale's name, to be expressions of anger on Goddard's part. Hale inaccurately assumed that Goddard was "trying to show me up" in front of his fellow Union members, "to put me in my place, so to speak."<sup>11</sup> Hale accordingly responded, in a tone about as angry as Goddard's, "I'm not your buddy, and take your hands off me." Hale did not stand up nor did he give any other indication that he was going to honor Goddard's order to join Goddard in the aisle.

In an effort to get Hale moving toward the aisle, and perhaps without even being aware of it, Goddard gave an upward tug to the seated Hale's elbow. Hale exploded in anger, perhaps shouting "keep your god damned hands off of me," or perhaps using considerably nastier language.

Having just been cursed at by an employee in the midst of a group of employees, Goddard got as angry as Hale was. Goddard loudly ordered Hale to stop cursing, to leave the table, and to go into the aisle. Goddard may have touched Hale again. If so, it was accidentally.

<sup>9</sup> In virtually all instances in which I refer in this decision to General Counsel contentions, the Union took a comparable position.

<sup>10</sup> Among some of the employees in the plant, "buddy" carries homosexual connotations. But Goddard plainly did not use the term that way, and Hale understood that Goddard did not. The only import of this connotation of "buddy" is that it apparently led another committeeman subsequently to express himself to Goddard in an exceedingly inappropriate and offensive manner.

<sup>11</sup> The quotations are from Hale's testimony.

At this point Hale hurried into the aisle, to a point about 25 feet from the table. Goddard followed right behind him. Goddard and Hale began a loud, angry, conversation on the subject of why Hale had not checked in with a supervisor when he came into the area. Meanwhile the other employees at the table left the immediate area, anxious to get away from what they considered to be an utterly shocking situation.

I will discuss below the further interactions between Goddard and Hale on September 20. But as that discussion will indicate, if at this juncture Goddard's behavior relative to Hale had not violated the Act, then Goddard's actions on September 20 did not violate the Act at all.

In that regard, in addition to my findings described above, I specifically find that:

(1) Goddard, throughout the episode just described, was motivated solely by his irritation with the employees' having overstayed their break time and by his desire to eliminate the practice whereby committeemen entered work areas without checking in with the supervisor. I have considered the fact that Goddard never did say anything to Hale or any of the other employees about his wanting them to get back to work. But Goddard was not prepared for the response he got from Hale. And once Hale erupted, Goddard focused only on Hale.

(2) Goddard's actions were not predicated on any desire to interrupt the protected activities of any employee. The General Counsel's brief argues that Goddard's intent was to "harass a union committeeman performing his duties in the middle of this bitter labor dispute." That was not so. It was entirely appropriate for Goddard to interrupt a discussion among employees about union matters if the discussion was taking place when the employees should have been working. And as far as Goddard was concerned, that was precisely the case.

#### D. POST-BREAK TABLE EVENTS

As soon as Hale and Goddard reached the aisle, Goddard said – or rather, snarled – something like, "why didn't you look for the supervisor when you came into the area?" But Hale was in no condition to respond to questions. Instead Hale loosed a stream of expletives, all aimed at Goddard. Goddard, exceedingly unhappy about this exchange being within eye- and ear-shot of a number of employees, broke into that hail of curse words and ordered Hale to go to Goddard's office. More likely than not, Goddard also said something about bringing in security personnel unless Hale quieted down.

Hale, who did not have to be psychic to realize that he had greatly angered his factory manager, assumed that Goddard's order to go to the office, and, perhaps, the reference to security personnel, was a prelude to his being fired. Hale, still besides himself with anger, responded by saying something on the order of, "you don't have the balls to walk me out of here." Hale then took his Caterpillar badge from his pocket and slammed it down on a nearby stack of steel plates. A number of employees saw Hale slam down his badge. (It became the talk of Building D.)

Hale's was not an insignificant gesture. One needs a badge to enter Caterpillar property. If a supervisor tells an employee to hand over his or her badge, that amounts to a statement that the employee is being fired or, in the very least, suspended. Concomitantly, in many situations an employee's angrily handing over his badge can reasonably be interpreted as the equivalent of, "I quit." Goddard, who knew that he had not said anything to Hale about discharg-

ing Hale, assumed that Hale slammed down his badge in order “to project a particular image” – that the gesture was a theatrical one done with the audience of nearby employees in mind.<sup>12</sup> (Goddard almost surely was wrong about that. Hale's action was simply an expression of his anger and upset.)

Goddard picked up Hale's badge and put it in his pocket. (Hale became even more certain that he was being discharged; but I find that Goddard did not intend to give that meaning to his pocketing of Hale's badge.) Goddard and Hale then quietly walked the 100 yards or so to Goddard's office.

What followed was, first, telephone calls – by Goddard to Decatur's Labor Relations Manager, John Kuester; and by Hale to the Chairman of Local 751's bargaining committee, Ted Johnson (who is Hale's superior within the Union's hierarchy). A fruitless, albeit cordial, meeting then ensued involving Hale, Goddard, Kuester, and Madding (as Hale's steward).

Later that day Madding filed a grievance on behalf of Hale. The grievance contended that Goddard “physically attempted to remove Mr. Hale from Caterpillar property” (which was not the case) and that Goddard “discharged Mr. Hale” (which was not the case). The grievance remains pending.

Caterpillar did not discipline Hale in any respect in connection with the events of September 20.

#### E. Goddard and Hale – Conclusion

I conclude that, by Goddard's actions toward Hale as Hale sat at the table with other employees, Caterpillar violated Section 8(a)(1) of the Act.

Caterpillar supervisors almost always address employees by their names, not by “buddy.” Supervisors rarely touch employees. And a supervisor attempting to pull an employee up from a sitting position is unheard of. Yet Goddard did address Hale as “buddy” and did attempt to pull, or at least to guide, Hale from a sitting to a standing position. On top of that, Goddard was not a first-line supervisor; he was a plant manager. It is safe to assume that none of the employees had ever seen a Caterpillar plant manager behave toward any employee the way Goddard did toward Hale.

Goddard engaged in that behavior toward Hale while Hale was peaceably engaged in conversation with half a dozen employees. Of the employees, only two, Hale and Madding, were union officials. And of Hale and Madding, Hale was considerably the more senior.

In these circumstances I conclude that: (1) to the employees gathered at the table with Hale, the reasonable import of Goddard's words and actions toward Hale was that Goddard had singled out the ranking union official as the target for extraordinary and disagreeable contact; and (2) Goddard's actions accordingly “may reasonably be said” to tend “to interfere with the free exercise of employee rights under the Act.” *NLRB v. Illinois Tool Works*, 153 F.2d 811, 814 (7th Cir. 1946), quoted in *Caterpillar, Inc.*, 322 NLRB No. 115, slip op. at 2 (Dec. 10, 1996).

The matter, however, is not free from doubt.

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<sup>12</sup> The quotation is from Goddard's testimony.

To begin with, I consider it significant that moments after Goddard and Hale moved away from the table, Goddard loudly raised with Hale the matter of Hale having not contacted the area supervisor. A number of employees had to have heard Goddard say that. And that should have indicated to those employees that Goddard chose to have sighted on Hale, rather than any of the other employees at the table, for appropriate managerial reasons. Still, that was not an explanation for the manner in which Goddard interacted with Hale. And the record provides no reason to find that each of the employees who heard and saw Goddard's interaction with Hale also heard Goddard's words to Hale about checking in with a supervisor.

Second, Hale's status was different from the other employees at the table not only because of his union position but because he was the only employee at the table who did not work in the area. But I consider it unlikely that employees would focus on this circumstance.

Third, while the General Counsel and the Union argue that Goddard's motives were a product of animus toward the Union, I have found that not to be so. That finding, however, does not exonerate Caterpillar since "[i]t is well established . . . that the test of interference, restraint, and coercion under Section 8(a)(1) does not turn on an employer's motives or beliefs." *Caterpillar*, supra.

Fourth, within seconds Hale responded to Goddard with a stream of curses and taunts, utterances that arguably would have justified Caterpillar terminating Hale's employment. Yet Goddard did not discipline Hale in any way or even threaten to do so. Perhaps the Board should take account of that response by Caterpillar to Hale's response to Goddard. That is, one might conclude that, under these circumstances, employees would reasonably understand that holding union office was not as risky as Goddard's initial behavior toward Hale might suggest. But I do not understand that the Board has ever accepted any such tit-for-tat defense in respect to a supervisor's behavior that otherwise violated Section 8(a)(1).

Fifth, the employees' behavior that Goddard interrupted was not protected in that Goddard believed that break time had ended, and the record does not show Goddard to have been mistaken about that.

Last, and most importantly, there is the question of whether one instance of a supervisor singling out a union official as a target for unusual and unpleasant behavior is enough "to interfere with the free exercise of employee rights under the Act" (to again quote *Illinois Tool*), absent discipline of the union official, threat of discipline, or, at least, reference by the supervisor to union activity. The answer is by no means clear. But as indicated above, I conclude that, in the circumstances discussed above, Goddard's behavior would reasonably tend to have that unlawful effect.<sup>13</sup>

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<sup>13</sup> I have taken into account the Board's view concerning the relative lack of significance of an employee deliberately touching a supervisor. *Caterpillar, Inc.*, 322 NLRB No. 115, slip op. at 4 (Dec. 10, 1996). But Goddard's contact with Hale went beyond one touch.

## F. THE IN-PLANT CAMPAIGN AND MANAGEMENT'S RESPONSE

By and large the issues concerning Caterpillar's treatment of Hale are unrelated to those concerning the Company's treatment of Morrell, Schott or Syfert, which treatment will be the subject of the pages ahead. But there is one issue that touches all four cases under consideration here – and, indeed, is relevant to other aspects of Cat II as well. That is, the Union's "in-plant campaign" and the response to it by members of Caterpillar's management.<sup>14</sup>

From 1992 through the period under consideration in this decision, the Union urged Caterpillar employees to reduce their output and to engage in other activities that could adversely affect Caterpillar's profitability, even while the employees remained on Caterpillar's payroll. Management was well aware of these efforts by the Union and was concerned about their impact on Caterpillar. (I earlier touched on Goddard's views in this respect.)

One splinter group of employees, the "New Directions" group, considered even that advice by the Union to be insufficiently aggressive. Thus a New Directions publication, the *Troublemaker's Handbook*, referred favorably to employee efforts (at other companies) to sabotage their employers' equipment. Management was aware of the *Troublemaker's Handbook* and believed it to be circulating among at least some of its employees. It is unclear whether management was aware that the Union's hierarchy had disassociated the Union from New Directions, and it unclear to what extent management was concerned that any Caterpillar employees found the *Troublemaker's Handbook* to be persuasive. Given the circumstances prevailing since 1992 in many of Caterpillar's facilities organized by the UAW, however, there is no doubt that management proceeded on the assumption that some employees might follow New Directions' urgings.

The fact that management was concerned that employees were being urged to damage the Company in one respect or another did not, of course, entitle management to act against an employee because of protected activities by that employee. Thus, for example, the Union's urgings to employees to reduce productivity would not have entitled Goddard to single out Hale in the manner discussed above even if the record were clear that Goddard's actions stemmed entirely from his concern about those urgings by the Union (which the record is not).

A prevalent state of mind on the employees' part also ought to be taken into account. In the period of relevance to *Cat II*, at least some of the more active members of the Union seemed to have come to believe that almost all disagreeable actions by Caterpillar supervisors were attributable to a deliberate effort by Caterpillar to disempower the Union, even in circumstances in which Caterpillar employees would ordinarily recognize that the supervisors' behavior was unrelated to union considerations.

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<sup>14</sup> See, e.g., my decision in *The Bulletin Board Cases*, JD-101-96, slip op. at 6-7, which discusses the relevance of the Union's in-plant campaign to a case about whether Caterpillar violated the National Labor Relations Act (the Act) by removing a union flyer from a bulletin board in the Company's East Peoria facility.



## II. RANDY MORRELL AND MAURICE SCHOTT

According to the General Counsel's principal allegations in Cases 33-CA-10559 and 33-CA-10563, Caterpillar supervisors treated employees Randy Morrell and Maurice Schott discriminatorily, and threatened them, because of their union activities.

For reasons that will become evident later in this Decision, by and large all of these allegations are intimately connected to a demand that Morrell made on December 3, 1993, to see a safety representative. I accordingly turn first to that incident. (All of the events discussed in this part of this decision occurred between December 1993 and March 1994.)

### A. RANDY MORRELL'S DEMAND FOR A UNION SAFETY REPRESENTATIVE

Caterpillar employs Morrell as an assembler in the "Mining Vehicle Center" (the MVC), in Building D of the Company's Decatur facility. At all times relevant to this proceeding, Morrell's immediate supervisor was David Slightom.

The MVC produces huge off-road vehicles designed for use in surface mining operations. During the period in question Morrell assembled the engines of two types of such vehicles.

Morrell has worked for Caterpillar for about 30 years. Morrell is intelligent and articulate. He is a knowledgeable, competent employee who is justifiably proud of his skill at assembling the complicated engines required by the vehicles produced by the MVC. Less than a half year before the events at issue here, Slightom wrote that Morrell was cooperative, that he accepted responsibility for getting the job done, and that Morrell was safety-minded.

As for Morrell's relationship with the Union, there is no dispute that Morrell was, and is, a "strong" supporter of the Union (to use his term) and that Caterpillar supervisors knew that to be so.

#### *"Drivers" and Caterpillar's Tool Maintenance Policies*

Among the tools that Morrell used in his work were various kinds of "drivers." Drivers are used to force ball bearings and other parts into place. To that end one part of every driver is a cylinder an inch or two in diameter with a flat, solid top that is designed to be hit with a hammer.<sup>15</sup>

In the normal course of events, the top of a driver will eventually "mushroom." That is, as a matter of ordinary wear and tear, after a driver is hit enough times with a hammer, the top will spread beyond the sides of the cylinder (by some small fraction of an inch). Were an employee to continue to use a driver after its top mushroomed, two types of injury could result: the employee could get cut by the irregular, sharp, mushroomed edge of the top of the driver; or a chip from the edge could fly off (when hit by a hammer blow) and, possibly, hurt someone. Accordingly mushroomed drivers are routinely sent to the facility's tool shop to have the mushrooming removed (via a grinding process).

Also in the normal course of events, drivers' handles work themselves loose. Again, that is a routine problem that often calls for repair by the facility's tool shop.

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<sup>15</sup> A photograph of a few types of drivers is in the record as Rsp. Exh. 1003.

In the MVC, employees are not responsible for sending tools in need of repair to the tool shop. That is their supervisors' job. But employees are responsible for bringing to their supervisors' attention the need for such repairs as that need arises. Concomitantly it is not the supervisors' job to conduct safety inspections of the tools being used by their employees. More specifically, Morrell's job included staying aware of the condition of the drivers he used and, when one began to mushroom or otherwise need repair, to tell Slightom about it so that the necessary repairs could be ordered.

### *The Initial Events of December 3*

As of the morning of December 3 (1993), all of the drivers that Morrell used for engine assembly were mushroomed or had loose handles. Morrell, that is, had plainly failed to report the mushrooming and loose handles as these problems developed.

Morrell's testimony includes no explanation about this failure on Morrell's part, and I find that either Morrell was negligent in allowing this state of affairs to come about or that he deliberately waited to advise Morrell about the drivers until many of them needed repair.

In that latter regard, while at most places of employment the deliberate withholding of information about tools in need of repair would be too remote a possibility even to mention, that was not true at Caterpillar in 1993. There, after all, the Union, as part of its in-plant campaign, had suggested to employees that they do what they could to make life difficult for their supervisors and to interfere with the efficient conduct of Caterpillar's business.

Early in the December 3 day shift, Morrell told Slightom that he wanted to see his union safety representative. Slightom asked why. Morrell initially refused to give Slightom any explanation. Then, when some minutes had gone by and after further questioning by Slightom, Morrell told Slightom that the reason for his request was that some of the drivers were mushroomed. In the meantime Slightom refused to call a union safety representative. Slightom's reason for that refusal was that under the Implemented Proposal (and under the previous collective bargaining agreements between Caterpillar and the Union), union safety representatives came into the picture only if the supervisor failed to "initiate appropriate corrective measures."

The relevant provision (Article 8(3)) reads:

Stage 1: An employee who believes that a condition has developed which presents a significant threat to his safety should promptly notify his Foreman of such condition. The Foreman shall determine, as promptly as possible, whether such condition represents a significant threat to the safety of the employee or employees involved and, if indicated, initiate appropriate corrective measures.

Stage 2: If a satisfactory solution to the problem cannot be agreed upon in Stage 1, the employee may request and the Foreman shall, without undue delay, send for the Safety Subcommitteeman . . . for the purpose of conducting a Stage 2 joint investigation of the problem with the Foreman.

If Morrell had asked to have the drivers repaired and Slightom had instead insisted that Morrell keep using them, that at least arguably would have "present[ed] a significant threat" to Morrell's safety and Morrell would have been entitled to call for a union safety representative. However nothing like that happened.

I will also assume, for argument's sake, that Morrell could reasonably have believed that he was entitled to meet with a union safety representative if Morrell had been concerned about the possibility that the mushrooming and loose handles stemmed from inherent flaws in the drivers. But Morrell nowhere suggested that that was the reason he asked to see a safety representative.

Rather, Morrell testified that he took the tack that he did because he was unsure of how Slightom would handle the drivers problem. The record shows that testimony to be false.

Morrell also testified that, at the time, his safety representative was a newcomer; Morrell wanted to use the situation, Morrell continued, in order to educate him about mushroomed drivers. I do not credit that testimony either; Morrell almost surely had no such thought at the time he demanded to see a safety representative.

Finally, Morrell testified that he asked Slightom to provide a union safety representative because "it is very clear that employees, Union representatives and the Company are supposed to jointly try to head off safety problems." Morrell referred, in this regard, to "Article 8(1) and 8(2)" (of the Implemented agreement and the previous collective bargaining agreement). Again, I do not credit Morrell's testimony. After all, there was no "safety problem," as Morrell knew. There were merely some tools that predictably, and in the normal course of events, had come to need repair. (As for the number of drivers that needed repair, that did not turn a maintenance issue into a safety issue, and, additionally, the fault there lay with Morrell.) I accordingly find that Morrell's reference to "Article 8(1) and 8(2)" was more probably than not a disingenuous reference to provisions that Morrell knew had nothing to do with the situation at hand.<sup>16</sup> (The General Counsel and the Union suggest that even though Articles 8(1) and 8(2) do not by their terms apply to the driver situation, it was plant practice to treat as them applicable in circumstances comparable to the one under discussion here. But the record fails to support that contention.)

Having found that all of the reasons that Morrell gave for demanding a safety representative were false, I conclude that: (1) Morrell knew perfectly well that the situation did not call for the presence of a safety representative; and (2) Morrell was acting in bad faith and with an intent to harass when he told Slightom that he wanted to see a safety representative. Cf. *Shattuck Denn Mining Co.*, 362 F.2d 466, 470 (9<sup>th</sup> Cir. 1966); accord, *Triple H Electric Co.*, 323 NLRB No. 90 at fn. 2 (April 1997).

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<sup>16</sup> Article 8.1 reads:

The Company, the Union and employees will cooperate toward the prevention of accidents and furtherance of a safety program. . . .

The Company and the Union are mutually aware of the need for continued interest in the health and safety of employees covered by this Agreement. The parties jointly recognize that the elimination or minimization of unsafe or unhealthy acts and conditions in the workplace is of mutual benefit and, as such, should not be pursued in an adversarial environment. The parties further recognize the mutual advantage of correcting any deficiencies and resolving any disputes at the earliest opportunity. Therefore, the parties agree to place renewed attention, emphasis, and effort into the use of the local safety complaint procedure. To this end, the Union, in order that it may assist its members, will encourage them to use these procedures before considering referral to the matter to any governmental agency. The Company agrees to continue to ensure that Supervisors at all levels give proper priority to health and safety issues and that such Supervisors are informed of the facilities and techniques available to respond to health and safety issues.

Article 8.2 reads:

Each plant shall have a Safety Committee [which meets monthly] .... The functions and objectives of the Safety Committee will be ....

*Later Events Regarding The Drivers*

5 Once Slightom learned that Morrell's concern had to do with mushroomed drivers, Slightom told Morrell to place the drivers someplace where they could be inspected. Slightom then left the area to handle other matters.

10 Slightom returned to Morrell's work area and again described to Morrell the interrelated rights and responsibilities of employee, supervisor, and safety representative. (At the time, Slightom had a union safety representative, Mike Hoadley, in tow. Local 751's president, Larry Solomon, was also nearby. But neither Hoadley nor Solomon played a significant role in the Slightom-Morrell exchange.)

15 Morrell's response was to tell Slightom that he wanted to see a union steward in order to file a grievance over Slightom's refusal to provide Morrell with a safety committeeman. Since Morrell knew that he had not been entitled to see a safety representative, it is inescapable that this demand too was made in bad faith. (I note, in this connection, that the time spent in the preparation of a grievance is not trivial, even if the grievance does not get beyond the first stage.)

20 Slightom told Morrell that safety issues were not grievable and that, accordingly, Slightom was not going to provide Morrell with a steward. Slightom and Morrell again then went their separate ways.

25 At some point in this same time period, Slightom asked the facility's tool room supervisor, Lyle Locke, to take a look at the drivers in Morrell's area. Locke did so and concluded that all of the drivers used by Morrell needed to be repaired. The next time, Locke said, "don't wait so long" – referring to the fact that individual drivers had not been sent to the tool room for repairs as the need arose. (Tool room personnel carted the drivers away; repairs were completed a day or so later.)

30 Toward the end of the shift Morrell again asked to see a steward. This time Morrell's complaint was that Slightom had refused to provide Morrell with a steward to deal with Slightom's failure to provide Morrell with a safety representative. Given Morrell's initial bad faith in demanding a safety representative, this request too had to have been made in bad faith. (Slightom did round up a steward for Morrell, and Morrell did file the grievance.)

40 In sum, I find that Morrell: (1) demanded to meet with a union safety representative when he knew that he was not entitled to do so and in circumstances in which the presence of a safety representative would have served no purpose; (2) demanded to see a union steward in order to file a grievance about Slightom's refusal to call a safety representative when Morrell knew that Slightom's refusal had been appropriate; and (3) demanded a union steward and then filed a grievance about Slightom's earlier refusal to provide a union steward when Morrell knew that that refusal by Slightom had also been proper.

45 The record shows that Morrell had no history of seeking to interfere with production (apart from an incident on December 1 that I will discuss in the following section of this decision) and that on occasion Morrell's actions ran counter to the urgings of the Union's in-plant campaign. Nonetheless, Morrell's behavior regarding the drivers was so extraordinary that I find that the probable reason that Morrell behaved in that manner was to provoke a clash with Slightom or to interfere with production or to do both.

Throughout the hours that it took for the drivers incident to unfold, Slightom proceeded

on the assumption that Morrell's request for a union safety representative, and Morrell's subsequent requests to meet with union stewards, were merely the product of a misunderstanding on Morrell's part about the workings of Article 8 of the Implemented Proposal (and the prior collective bargaining agreements). That is evident from, among other things, Slightom's repeated attempts to explain the workings of Article 8 to Morrell. But by the end of the day Slightom decided that this assumption had been wrong. Rather, Slightom concluded (as I have) that Morrell was acting in bad faith when he asked to meet with a safety representative and when he made his two related requests to meet with stewards. To use Slightom's term, Slightom concluded that Morrell's behavior regarding the drivers had been "orchestrated."<sup>17</sup>

#### B. THE "LINE CHECKING" INCIDENT

Before turning to the General Counsel's allegations about management's discriminatory treatment of Morrell and Schott, I am going to briefly touch on an incident that occurred a few days before the controversy over the drivers.

Traditionally, parts used by Morrell and the other assemblers in the MVC came in "kits" that were put together by employees in the facility's materials department. Each kit was intended to contain all of the parts necessary for a given assembly process. As one might expect, for one reason or another the parts in a given kit would sometimes turn out to be insufficient. When that happened, the assembler would have to either personally go to the facility's materials area for the part – which could be just one bolt or nut – or wait until the part was delivered. Either way, the assembly work was delayed and considerable paperwork was generated.

Slightom was unhappy about the inefficiencies of this system and pushed hard for an alternative approach to the stocking of parts in assembly areas. Slightom wanted the MVC to adopt a "two-box" system. Under this system, two boxes of each necessary part are kept in work areas. The boxes are shelved in such a way that as the first box of any given part is emptied and then removed from the shelf, the second box slides into the vacated spot. It is the obligation of each employee who uses any given type of part to order another box of parts when one is emptied. (If the system is working properly, therefore, at all times either two boxes of a given kind of part are on the shelf, or one box of the parts is there and a second box has been ordered.)

Slightom ran into not inconsiderable organizational inertia in his attempt to change the parts-stocking system. But in about early 1993 he succeeded, and the two-box system was installed in the MVC. Slightom thereupon had to teach the employees he supervised how to use the system. (The training included, for example, details of the process by which boxes of parts were to be ordered.)

It was inevitable that, given this history of the two-box system, Slightom developed a personal stake in the system's continued successful functioning.

Sometime during his shift on Wednesday, December 1, Morrell walked along the line of parts boxes in his area, looking in each to determine whether the number of parts in it was "low" (as Morrell put it). If that was the case, Morrell checked a listing of the parts that had recently

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<sup>17</sup> It may be recalled that at one point Local 751's President, Larry Solomon, showed up at Morrell's side. Slightom apparently believes that Solomon and Morrell (and perhaps others) jointly planned Morrell's course of action regarding the drivers. The record neither supports nor contradicts Slightom's belief in this regard.

been ordered, “to keep from double ordering” (again quoting Morrell), and, if not, writing a note to himself to order the parts.

5 Why did Morrell do that? He testified that he did so because “when I came over to get some parts, I noticed that there were some parts that were low and needed to be ordered,” and because it was his understanding that it was part of his job “to order parts whenever they were low.”

10 The fact of the matter, however, was that Morrell was not adhering to the procedures called for by the two-box system. It is possible, albeit most unlikely, that Morrell simply misunderstood how the two-box system was supposed to work. It is also possible that while Morrell did understand how the system was designed to work under ordinary circumstances, he mistakenly thought that, for reasons related to the particular circumstances at hand, it was appropriate to check all of the parts boxes. Indeed, had there been no incident concerning the drivers, I would find that this latter possibility was as likely as any other. But given that incident and Morrell’s bad faith conduct there, I find that the more likely reason that Morrell spent time checking the various parts boxes was to provoke a confrontation with Slightom or to interfere with the efficient conduct of Caterpillar’s business (as in the case of Morrell’s improper demand to meet with a union safety representative).

20 Slightom spotted Morrell while Morrell was in the midst of his box-checking process. Slightom angrily told Morrell that Morrell was failing to adhere to the procedures called for by the two-box system and that as far as he (Slightom) was concerned, Morrell “was just trying to find ways to keep from building engines.” (The quote is from Slightom’s testimony.)<sup>18</sup>

25 For one reason or another, Slightom ended up looking at Morrell’s list of parts that needed to be ordered. Slightom told Morrell to “go ahead and order them” (per Morrell’s testimony). The General Counsel and the Union contend that this shows that Morrell had merely been doing his job. But as my above findings indicate, that was not the case. As to why Slightom told Morrell to order the listed parts, the record does not tell us since Slightom did not testify about this particular utterance. (On brief Caterpillar speculates that Slightom thought that some use might as well be made of the time that Morrell had already spent checking the various parts boxes and the list of already-ordered parts.)

30 Morrell subsequently filed a grievance claiming that Slightom’s December 1 criticism of Morrell amounted to “harassment.” Since I have found that it is more likely than not that Morrell deliberately failed to adhere to what he knew was the required parts-ordering system, and that Morrell did so for reasons having to do with his desire to provoke a confrontation with Slightom or the like, I also find that it is more likely than not that Morrell filed this grievance in bad faith.

#### 40 C. CATERPILLAR’S DISCIPLINE OF RANDY MORRELL

Slightom handed out two disciplinary warnings to Morrell on Monday, December 6. The General Counsel contends that Slightom did so because of Morrell’s union activities and that Caterpillar accordingly violated Section 8(a)(3) and (1) of the Act.

<sup>18</sup> In complaining about Morrell’s failure to follow two-box procedures, Slightom used the term “line checking.” Slightom was thereby referring to a procedure used in other areas of the Decatur facility where the procedure was to have parts bins in assembly areas stocked by employees from the facility’s Material Control Department. One of the jobs of the employees in that department was to “line check” – that is, to inspect a line of bins to determine whether all of the various parts that belonged in the bins were in fact in the bins.

*Morrell's Union Activity*

5 In most respects Morrell's activities on behalf of the Union were routine. For example, along with many, many other employees, Morrell handed out fliers announcing union rallies and the like. Activities of that nature were far too commonplace at Caterpillar, and Morrell had engaged in them for too long a period, to support any finding that in December they suddenly caused Slightom, or any other supervisor, to discriminate against Morrell.<sup>19</sup>

10 But in addition to that kind of activity, beginning in August 1993 Morrell wrote a number of articles and letters to the editor supporting the Union's bargaining position and criticizing Caterpillar's management and various Caterpillar supervisors. Some of the pieces were straightforward the-Union-is-right-management-is-wrong kinds of writings. They drew no flack. But one, a letter to the editor that was published in a local newspaper, did result in the labor relations manager of Caterpillar's Decatur facility, John Kuester, telling Morrell that the head of the Decatur facility "was not very happy" about the letter.<sup>20</sup>

20 And three of Morrell's articles that appeared in the *Local 751 News* referred specifically and sarcastically to "Jimster," an appellation that Morrell bestowed on James Goddard. Goddard, as Building D's Plant Superintendent, was Slightom's immediate supervisor.

The first article, in September, referred to a "Gestapo-style" attempt by Goddard to change the employees' work week from five 8-hour days to four 10-hour days.

25 The other two, in October and November, were about the Goddard-Hale incident (discussed in Part I of this Decision). The October piece referred to Goddard as a "loose cannon" because, among other things, he "roughed up" Hale, with the situation not exploding into a "catastrophe" only because (according to the article) Hale stayed "cool under fire."

30 When Goddard complained to Morrell about what Goddard perceived to be inaccuracies in the article, Morrell used that as the basis for the fourth piece in the *Local 751 News*. That article did describe Goddard's complaints; but it did so in the sarcastic tone of the previous articles.<sup>21</sup>

35 There is no doubt that Morrell's writing of those various articles and letters, and his having them published, constituted protected concerted activity. In fact Caterpillar does not contend otherwise.

*Slightom's Issuance of Disciplinary Warnings On*


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45 <sup>19</sup> The General Counsel and the Union point to Morrell's efforts in June 1993 to have the MVC's employees boycott a Caterpillar celebration of the completion the hundredth model 793 truck as activity that, in combination with other union activity, caused Caterpillar to discriminate against Morrell. But for reasons the record makes too obvious to elucidate, I find that not to be the case.

<sup>20</sup> The letter argued that Caterpillar has "offered a 10-hour day, four-day work week, not to UAW bargainers, but to the employees directly. Offered by telling the employees that if they don't take it, they will be transferred to a less desirable job. . . . When will Caterpillar realize that intimidation isn't the way to a working man's heart . . . ." The General Counsel does not contend that Kuester's remark itself violated the Act in any respect.

<sup>21</sup> Additionally, sometime in December the *Local 751 News* carried another Morrell article that spoke of the need for solidarity and then went on: "And I say to the Jim Goddards . . . at Cat, we want a contract and we will NOT be satisfied with less !! [sic]"

*December 6, And The Events Leading Up To Them*

As touched on in Part I of this decision, at Caterpillar's Decatur facility employees are permitted two breaks each shift (in addition to their meal break). For day-shift employees, one of the breaks is in the morning, the other is during the afternoon. On the breaks employees typically use the restroom facilities closest to their work areas and get soft drinks, coffee and the like from vending machines located near the restroom. For the remainder of a break employees commonly chat among themselves at any handy location not too far from their own work areas. (Recall the employees seated around a table at the time of the Goddard-Hale eruption.)<sup>22</sup>

In late November Slightom decided to impose a restriction on this break format. The restriction: once an employee had had an opportunity to use the restroom and the vending machines, the employee was to return directly to his or her working area, even if that meant that the employee had to spend the break alone. Accordingly, at the end of November and on into early December Slightom met individually with each of the employees he supervised, including Morrell, and ordered each to follow this procedure.<sup>23</sup> (Slightom imposed that restriction because he was dissatisfied with the productivity of his employees.<sup>24</sup>) Slightom did not get around to having this discussion with Morrell until December 3, shortly after the conclusion of the events concerning the drivers.

Morrell testified that Slightom spoke to him about taking breaks in one's own work area immediately after Morrell made his second request for a steward in connection with the drivers episode. Slightom indicated, Morrell's testimony continued, that he was imposing this break-time restriction on Morrell because of Morrell's behavior that day, including this request by Morrell to meet with a steward. But Morrell's requests had been made in bad faith and were therefore unprotected. See, e.g., *NLRB v. City Disposal Systems*, 465 U.S. 822, 837 (1984); *United Parcel Service of Ohio*, 321 NLRB 300 (1996)(filing of a grievance held to be protected since it "was not used as a sword . . . to conceal a motive of harassment"). Thus it would have been perfectly appropriate for Slightom to have imposed that restriction for this reason. In any event, I have already found that Slightom was in the process of imposing this restriction on all of the employees whom he supervised. I therefore shall recommend dismissal of the complaint's allegation in Case No. 33-CA-10559 that Slightom "discriminatorily restricted the breaks and otherwise restricted the physical movement" of Morrell "in retaliation for his union activities."

Immediately after Slightom ordered Morrell to take his breaks in his own work area, Morrell said that he wanted to file a grievance over that order; Morrell asked to see a steward. Slightom complied with that request for a steward, and Morrell did meet with the steward in respect to the breaks-in-one's-own-work-area matter.

Morrell and Slightom both worked the following day – Saturday, December 4 (Morrell on

<sup>22</sup> Another gathering of employees during a break is briefly described in Part III, *infra*.

<sup>23</sup> The General Counsel does not contend that Caterpillar thereby violated Section 8(a)(5). I note that the General Counsel contends that Slightom did not restrict some employees to their work areas during breaks – employees who were less active in their support of the Union than Morrell and Schott. (In this connection there was much testimony about whether there was one work area in the MVC called the "wheel and banjo" area or whether the wheel area was considered a separate work area from the banjo area.) My conclusion, as indicated in the text above, is that Slightom's enforcement of the work area restriction was unrelated to the employees' union activity.

<sup>24</sup> In February 1994 Slightom permitted employees to return to the former practice of taking breaks outside their work areas.



a voluntary overtime basis). A friend of Morrell's, Maurice Schott, also worked that Saturday (again, on a voluntary overtime basis).

5 When the time arrived for the morning break, Morrell and Schott met at the vending machines, together moved down an aisle toward their respective work areas, and then stopped in or near the aisle to chat. At the time Morrell was about 50 feet from his work area; Schott was about 30 feet from his.<sup>25</sup> After about five minutes Morrell and Schott proceeded to their work areas where each spent the remainder of the break.

10 During that five-minute chat both Morrell and Schott were, technically, disobeying Slightom's directive that each employee return directly to his own work area after visiting the rest-room and vending machines. On the other hand, both Morrell and Schott had moved toward their work areas relative to the vending machines, neither was far from his work area, and each  
15 spent the last part of the break in his own work area. Additionally, during overtime hours supervisors often tended to relax normal work rules a little.

20 Slightom noticed Morrell and Schott while they were talking together and kept track of how long that continued. Slightom concluded that Morrell and Schott had stopped to talk together outside of their work areas as a deliberate tactic, that they were testing to determine just how far they could go in terms of not complying with Slightom's orders before Slightom would discipline them. "I believe," Slightom testified, that –

25 they, in fact, knew that they shouldn't be doing what they were doing and were not doing what I had requested that they do and they were, in fact, trying to force me, at some point in time, when will there be a line drawn in the sand, when will management act.

30 I credit that testimony as an accurate reflection of Slightom's state of mind. I do so for two reasons. First, it was only the day before that Slightom had told both Morrell and Schott that they were to take their breaks in their work areas. Additionally, and more importantly, this occurred on the morning following Morrell's strange behavior regarding the drivers, behavior that, I have found, Slightom accurately believed Morrell to have undertaken in order to harass Slightom or to impede production.<sup>26</sup>

35 It may be recalled that on Friday, December 3, Morrell told Slightom that he wanted to grieve Slightom's directive that Morrell take his breaks in his own work area. The following Monday, December 6, Morrell and a steward presented that grievance to Slightom. Slightom used that occasion to hand two warning notices to Morrell. One was for "restricting production by being disruptive." The other was for a "failure to follow simple directions."  
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The General Counsel and the Union contend that it was Morrell's protected, concerted behavior, including his authorship of the newspaper pieces discussed above, that caused Slightom to issue the warnings. My conclusion is that this was not the case.

45 Turning first to the "restricting production" warning, the record is clear that by that language Slightom intended to refer to Morrell's behavior on December 3 in respect to the drivers.

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<sup>25</sup> Those distances are based on Slightom's testimony and on what I understand to be the scale of the drawing in the record as Rsp. Exh. 1008.

<sup>26</sup> I make no finding, however, about why Morrell and Schott in fact opted to stop en route to their work areas to hold a conversation.

Slightom testified that during the course of the weekend (December 4 and 5), he came to the conclusion that Morrell behaved as he had on Friday in order to interfere with production, in consonance with the Union's in-plant campaign. As my findings about Morrell's probable motivation indicate, that was an entirely reasonable conclusion for Slightom to have arrived at. I accordingly credit that testimony. I also credit Slightom's testimony that it was this conclusion that led Slightom to issue the warning.

As for Morrell's union activity, while much of it was entirely commonplace, that was not true of his authorship of newspaper pieces. But Slightom did not impress me as the kind of person who would concern himself with an employee's anti-management newspaper articles.

I have considered the fact that Slightom did confer with Goddard prior to handing out the warnings. Goddard, clearly, sometimes responds impulsively and inappropriately toward employees.<sup>27</sup> But it seems to me that it would be entirely out of character for Goddard to connive with another supervisor to discriminate against an employee. In theory, of course, that leaves the possibility that while Goddard may have said nothing to Slightom about Morrell's union activity during that conversation about Slightom's plans to issue disciplinary warnings to Morrell, in fact Goddard permitted Slightom to proceed only because of Goddard's irritation with Morrell's newspaper pieces. But since Caterpillar made out its affirmative defense (Morrell's unprotected behavior concerning the drivers, and Slightom's reaction to it), it was up to the General Counsel to prove by a preponderance of the evidence that Caterpillar's reference to that unprotected behavior by Morrell was a pretext. *Wright Line*, 251 NLRB 1083, 1088 at fn. 11 (1980), enf'd., 662 F.2d 899 (1st Cir. 1981), cert. denied, 455 U.S. 989 (1982); approved in *Transportation Management Corp.*, 462 U.S. 393, 395 (1983). And that the General Counsel has failed to do.

Finally, as for the fact that Slightom handed the disciplinary notice to Morrell at the time that Morrell filed a grievance with Slightom, that is beside the point. The record shows that the receipt of grievances from employees was something that Slightom considered an altogether routine part of factory life and that the employees who were supervised by Slightom knew that to be so.

That leaves the "failure to follow simple directions" warning notice. The "directions" that the warning notice referred to was Slightom's directive that employees must take their breaks in their own work areas. The warning notice issued, that is, because of Morrell's five-minute chat with Schott fifty feet from Morrell's work area.

The record shows that if any other employees supervised by Slightom had engaged in exactly the same activity, it is unlikely that Slightom would have disciplined them. Instead, it is more likely than not that Slightom either would have ignored the employees or would merely have ordered them to get to their respective work areas. But that does not mean that it was Morrell's pro-union behavior that resulted in Slightom issuing the warning notice, and I find that it was not. Rather, I find that Morrell's unprotected misbehavior on December 3 left Slightom angry at Morrell and unwilling to tolerate even the slightest further misbehavior. The warning notice aimed at Morrell's failure to comply with Slightom's work-area directive flowed directly from that state of mind on Slightom's part.<sup>28</sup>

<sup>27</sup> See Part I of this decision and my decision in the *Bulletin Board* phase of *Cat II*: JD-101-96, slip op. at 17-18.

<sup>28</sup> I note that there is no contention that Morrell and Schott were engaged in union or other protected activity during their five-minute chat. In connection with the grievance process, about two months later

## D. SLIGHTOM'S DISCIPLINE OF MAURICE SCHOTT

On December 6 Slightom gave Schott a written warning for "failure to follow simple instructions." As in the case of the identically worded warning notice that Morrell received on the same day, it referred to Schott's failure on Saturday, December 4, to return directly to his work area from the restroom area. The event that produced this warning notice, of course, was Schott's five minute conversation that day with Morrell.

I consider it probable that if Schott had had that break-time conversation with anyone but Morrell, he would not have received the warning notice. Schott and Morrell often spent their free time in the plant together. As just discussed, Slightom believed, with some reason, that Morrell's failure to return immediately to his own work area was aimed at harassing Slightom. Slightom linked that and the Morrell-Schott friendship and concluded that Schott was participating in Morrell's harassment effort. One might call that guilt by association. One might deem Slightom's issuance of the warning notice to Schott on that basis to be unfair. But that does not add up to a violation of the Act.

The General Counsel contends that Schott's union activity played a role in Slightom's issuance of the warning notice. In the context of the situation that then obtained at Caterpillar, however, Schott's union and other protected activity was altogether unexceptional. (In so finding I take into account that, among other things, Slightom responded angrily to Schott in the course of a discussion about a safety matter, that Schott told Slightom that he wanted to expand his union activity by handing out union literature during his breaks, and that Schott filed a grievance complaining of Goddard's interference "with the NLRA rights of employee Schott.") I accordingly conclude that Schott's concerted protected activity had no bearing on Slightom's issuance of the warning notice to Schott.<sup>29</sup> (I similarly conclude that the allegation in Case No. 33-CA-10563 that Slightom discriminatorily restricted Schott's physical movement should be dismissed.)

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management removed both disciplinary notices from Morrell's personnel file.

<sup>29</sup> As was the case with Morrell's disciplinary notices, management later removed this notice from Schott's personnel file.

E. CATERPILLAR'S INTERFERENCE WITH MORRELL'S  
RIGHT TO DISPLAY UNION INSIGNIA

5 In or about early November, Morrell taped some union materials to a tool box and to an empty cardboard carton in his work area. The posted materials were routine in nature (for instance, a rally notice and a union "solidarity" poster).<sup>30</sup> Both the tool box and the carton were Caterpillar's property, not Morrell's.

10 On December 7 Slightom ordered Morrell to remove the union materials from the tool box and to throw away the carton.

15 Morrell did as he was ordered, but then he replaced the removed materials with other comparable posters. Again Slightom ordered Morrell to remove them and, additionally, ordered Morrell to remove some pro-union stickers that had been pasted in Morrell's work area even though Morrell had not put them up. Morrell complied.

20 The General Counsel alleges that, by that action, Caterpillar violated Morrell's Section 7 rights.

At the hearing Slightom was asked whether the basis for his order was that the posted materials supported the Union. Slightom answered:

25 I guess that's a good question. The rag box, per se, was a housekeeping problem that needed to be thrown away. Posters on tool boxes or Company property, cabinets and what not, I guess my contention is that the types of Union literature, advertisements or whatever they might be, and I can't describe exactly what those pieces of paper were at that time, I didn't feel it was appropriate to display on Caterpillar property.

30 If I walked around the area and someone had a St. Louis Cardinals Baseball calendar taped to the side of a tool cabinet would I have immediately asked that person to remove that off Company property, probably not, no, sir.

35 That adds up to a violation of Section 8(a)(1) of the Act. See, e.g., *Mitchellace, Inc.*, 321 NLRB 191, 198 (1996); *Honeywell, Inc.*, 262 NLRB 1402 (1982), *enfd.* 722 F.2d 406 (8th Cir. 1983).

40 F. OTHER ALLEGATIONS IN CASES 33-CA-10559  
AND 33-CA-10563

*Surveillance*

45 The General Counsel alleges that Slightom and Goddard engaged in the unlawful surveillance of Morrell and Schott.<sup>31</sup> There is no contention that Morrell and Schott were spied on while they engaged in union or other protected activities. Rather, the claim is that management

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<sup>30</sup> Subsequently another employee taped another poster to the tool box. It was a mock "gift certificate" for Caterpillar's CEO for the services of Dr. Jack Kervorkian. Under the circumstances herein, no purpose would be served by concluding that the displaying of this poster was, or was not, protected activity.

<sup>31</sup> The complaint in 33-CA-10559 refers to surveillance of Morrell; the complaint in 33-CA-10563 refers to the surveillance of Schott.

kept a closer watch over Morrell's and Schott's work than that of other employees because of Morrell's and Schott's union activity.

I shall recommend that the Board dismiss these allegations.

To begin with, in the days following December 3, any increased watchfulness by Slightom over Morrell would surely have been the product of Morrell's misbehavior with respect to the drivers incident, not of union activity. And as discussed earlier, Schott's union activity was entirely unexceptional. Beyond that, I find that the record fails to show that either Slightom or Goddard (or any other supervisor) kept discriminatory tabs on either Morrell or Schott.<sup>32</sup>

*The Alleged December 7 Threat*

The complaint in 33-CA-10563 alleges that on December 7, Caterpillar threatened employees with discipline if they continued to engage in Union activities. The record fails to support this allegation, and I shall recommend that the Board dismiss it.

*Goddard's Alleged December 17 Threat*

The complaint in 33-CA-10559 alleges that on about December 17 Caterpillar, by Jim Goddard, threatened employees with unspecified reprisals if they continued to engage in union activities.

The only support for the allegation of which I am aware is testimony by a union committeeman, Phil Bryant, about a statement made by Goddard during the course of grievance discussions during the week of December 6 or the week of December 13 concerning the warnings that Slightom handed out to Morrell and Schott on December 6. According to the Bryant, during those discussions Goddard stated that "If things didn't change . . . he [Morrell, apparently] would have further discipline."

That simply is not enough to make out a violation of the Act. First, under the circumstances there present, the statement could not reasonably be heard as a reference to union activity. Second, I can not imagine Goddard telling a union committeeman, in the midst of grievance negotiations, that Caterpillar would discipline an employee if the employee engaged in additional union activities. Third, Goddard denied saying anything about further discipline resulting from additional union activity, and in terms of the demeanor of the two witnesses, Goddard's denial was no less credible than Bryant's testimony.

*Goddard's Alleged Threat In January 1994*

As a last matter regarding Morrell and Schott, the complaint in 33-CA-10559 alleges that in January 1994 Goddard told an employee that Morrell's union activities had caused his disciplinary warning and that the removal of the warning from Morrell's personnel file was conditioned on Morrell's cessation of those activities.

I shall recommend that the Board dismiss this allegation.

According to the testimony of Phil Bryant (the union committeeman), at a grievance meeting in January 1994 he asked Goddard if Goddard had thought any more about pulling the warn-

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<sup>32</sup> In so finding I take specific account of a time study of which Morrell was the subject in late January.

ings given to Morrell and Schott. Goddard, Bryant testified, did not answer the question. Rather, Goddard asked Bryant if he knew anything about the articles in the newspaper. Bryant said he did not and asked Goddard what the articles had to do with pulling the warnings. Bryant testified that Goddard then said, "I don't think much of them."

Goddard denied telling Bryant or anyone else that Caterpillar's pulling of the warnings that had been issued to Morrell and Schott was connected in some way with Morrell's newspaper articles.

Again, I consider it exceedingly unlikely that Goddard would so obviously have set himself up for attack under the Act. In this connection, I earlier referred to Goddard's impulsiveness. But here there is no contention that Goddard responded hotly to something that Bryant had said. Rather, Goddard is alleged to have suddenly switched to the subject of Morrell's newspaper pieces. For that reason I credit Goddard's denial.

#### G. CONCLUSION – CASES 33–CA–10559 AND 33–CA–10563

To summarize, in respect to Cases 33–CA–10559 and 33–CA–10563 my conclusion is that: (1) Caterpillar violated Section 8(a)(1) by reason of Slightom's directives to Morrell about the union materials posted in Morrell's work area; and (2) all of the other allegations in these two cases should be dismissed.

### III. GEORGE SYFERT AND PAUL COFFEY

#### A. INTRODUCTION

At all times material George Syfert was employed as a welder by Caterpillar on the third shift in Department 8165, Building B, of the Company's Decatur facility. (The third shift's hours were 11:18 p.m. to 7:18 a.m.) Syfert worked on parts used to attach the blades of motor graders to the graders themselves. Nearly everyone at Caterpillar calls the blade of a motor grader its "mold board."

Ordinarily Syfert's immediate supervisor was foreman Bob Mendenhall. But through much of February and March 1994, Mendenhall suffered from medical problems that kept him away from the plant. When Mendenhall was absent, Paul Coffey replaced him. On the day of the incident here in question Mendenhall was absent and Coffey was supervising Syfert and the other employees working in that part of Building B.

Also at all times material, Syfert served as a union steward, representing about 30 employees, including employees in his own area (department 8165) as well as in nearby areas.

In or around the end of February 1994, someone had written the words "Strike April 21" or "Strike April 10" on a mold board in Department 8160 (adjacent to Syfert's Department 8165). The words were written in chalk, with the letters somewhere between four inches and eight inches high. (There was plenty of room for the message. Mold boards are between 12 feet and 20 feet long.)

Early in the morning of March 4, 1994, Coffey ordered Syfert to erase the chalked words from the mold board.

Caterpillar contends that Coffey's selection of Syfert for the task was happenstance. According to Caterpillar, Syfert was the only employee in the area when a more senior supervisor

told Coffey to have the chalked words removed from the mold board.

The General Counsel argues that Syfert was not the only employee around when Coffey gave the order, that Coffey selected Syfert for the job because Syfert, as a steward, had recently had a hand in filing a considerable number of grievances. According to the General Counsel, moreover, when Coffey gave the order to Syfert, Coffey told Syfert that he had selected Syfert because of Syfert's participation in the filing of purposeless grievances.

In the words of the complaint in Case No. 33-CA-10743, Coffey –

(a) . . . singled out employee and Union steward George Syfert and directed him to clean off union slogans that had been placed on equipment even though it was known to Respondent that Syfert had not been involved in putting the slogans on equipment.

(b) . . . told employees that Syfert had been picked to do the "clean-up" described above in paragraph 5(a) because of his filing grievances over "trivial things."

Caterpillar, the General Counsel argues, thereby violated Section 8(a)(1) of the Act.

B. Evidence (And The Lack Thereof) Concerning  
Coffey's Order To Syfert To Erase The Words  
Chalked On The Mold Board

There are four different versions of the exchange between Coffey and Syfert by which Coffey ordered Syfert to wipe "Strike April 21" (or "Strike April 10") from the mold board: Coffey's, Syfert's, that of Carol Bray (a fellow employee of Syfert's); and that as written on a grievance that another employee submitted about the matter.

*Syfert's Testimony*

For some considerable period Caterpillar had from time to time placed advertisements in newspapers in the Decatur area that discussed, from management's viewpoint, the conflict between Caterpillar and the Union. Some Caterpillar employees were disturbed by these advertisements, believing them to be attempts by management to circumvent the collective-bargaining process. At least some employees with this point of view responded by filing grievances about the advertisements.

For Syfert that meant that he not infrequently was called on, as a steward, to present to management as many as a half-dozen grievances on one shift about these Caterpillar advertisements. (The grievance process starts with a conversation between an employee and his or her foreman. If the dispute can not be resolved that way, the employee asks to speak with a steward in order to file a grievance. The foreman rounds up the steward, the steward and the employee confer, and the steward and the grievant submit the grievance to the grievant's foreman. If the matter is not resolved here, it goes to the second step and, perhaps, the third step of the grievance process. As a practical matter, grievances that complained about Caterpillar's advertisements could never be resolved at the first step since, unlike most grievances, they did not concern the behavior of first-line supervisors.)

On March 3 a local newspaper ran a full-page Caterpillar advertisement of the kind just discussed.

According to Syfert, that advertisement led Syfert and five or six employees whom Syfert represented to complain to Coffey. The five or six employees then asked to meet with Syfert in order to file grievances. They did meet with Syfert, and early in the morning of March 4 he and the aggrieved employees presented the grievances to Coffey. Either when the Syfert and the other employees first talked to Coffey, or when they presented their grievances to him, Coffey responded (Syfert testified) that the employees' complaints were "just a bunch of bunk . . . there was nothing that any one of us could do about it."

Later Syfert met with still other employees who also presented additional grievances concerning the advertisement to Coffey (again, with Syfert present as their steward). This time, according to Syfert, Coffey responded by saying that the grievances were "frivolous and there wasn't nothing that anybody could do, we was just wasting time."

Syfert and Coffey did not communicate further until about 3:30 a.m. (the end of the lunch period) or, possibly, 5:15 a.m. (the end of the employees' second break – equivalent to the day shift's afternoon break). At that point Coffey either walked from his desk to Syfert or yelled to Syfert, ordering Syfert to come over to the desk. In either case, Syfert was halfway between his work area and the place he and about six other employees had taken their break at the moment Coffey spoke (or shouted) to him. Also at that moment, "there were 5 or 6 other employees present," including several of the employees who had filed grievances earlier on that shift about Caterpillar's newspaper advertisement.

Coffey thereupon told Syfert to follow him, walked over to the mold board with the chalked message, and told Syfert to erase the message. Syfert asked if that was a "directive." Coffey said yes. Syfert said, "it's not even my line." Coffey said "I know that". (Syfert was referring to the fact that the mold board was in Department 8160, not 8165. Syfert testified that he never before had had to do any cleaning outside of his own department.) Syfert said that he hadn't written on the mold board. Coffey said that he knew that too. Syfert then asked why Coffey had picked him out of the 5 or 6 people present. Syfert testified that Coffey said, "well, if you hadn't filed so many trivial grievances, you wouldn't be asked to do this."

Syfert did then erase the chalked words. Upon completing that chore, Syfert told Coffey that he wanted to file a grievance about Coffey's discrimination against him and asked Coffey to get a steward. Coffey did so. Syfert testified that he and the steward then submitted the grievance to Coffey.

I am perplexed by the General Counsel's and the Union's failure to present witnesses and documents supporting Syfert's testimony.

For one thing, according to Syfert a number of employees were with him both when Coffey stated that the employees' complaints about Caterpillar's advertisements "were a bunch of bunk" and when he said that grievances on the subject were "frivolous." But the only other employee to testify about the events in this case (33-CA-10743) was Carol Bray. And as will be discussed below, she said nothing about such alleged statements by Coffey.

Secondly, Coffey denied Syfert's contention that any grievances were submitted to Coffey during the shift on which Syfert wiped the chalked lettering from the mold board. Bray did not support Syfert on this issue. Additionally, the record contains no documentary evidence on point – no grievance filed on the shift in question. (On brief the Union claims that that lack of documentary evidence is because the employees were on strike at the time of the hearing and



thus had no access to records that the Union maintained in the plant.<sup>33</sup> But that is argument, not evidence. I have no reason to conclude that neither any of the employees nor Local 751 kept records of grievances in locations not controlled by Caterpillar.)

5 Thirdly, the record contains no documentary support for Syfert's claim that he ever filed a grievance complaining of Coffey's demand that he clean the mold board. That is, no grievance naming Syfert as the aggrieved is part of the record. And while another employee did submit a grievance about the incident here under consideration (as will be discussed below),  
10 that happened a week later.

15 As a last matter, at one point in his testimony Syfert stated that "my memory is not that well." I am not sure what to make of that. In my experience witnesses who deprecate their own memories sometimes turn out to have more accurate memories than witnesses who contend that they remember exactly what happened. Still, I have to take into account that evaluation by Syfert of his ability to recall events accurately.

### *Bray's Testimony*

20 Carol Bray, like Syfert, works for Caterpillar as a welder on the third shift in Department 8165. She holds no union office. She was called to the witness stand by the General Counsel. She was the only employee other than Syfert to testify about the Syfert-Coffey incident.

25 Bray testified that the Syfert-Coffey incident occurred at the end of the 5 a.m. break. She, Syfert, and two other employees had been sitting on some boxes in Department 8165. Syfert stood up and moved into an aisle a few feet away. Bray remained seated. (Bray did not testify about whether the other two employees also remained seated or, if they did not, in which direction they moved.) Given the placement of Coffey's desk, Syfert, in the aisle, was about eight feet closer to Coffey than was Bray.

30 At that point Coffey walked up to Syfert. Both Syfert and Coffey thereupon headed for the mold board with the chalked words. Bray saw Syfert wipe off the mold board. It looked as though Syfert and Coffey were saying something to one another, but Bray could not hear what they were saying. As for how long it took Syfert to complete the task, Bray did not know.

35 Bray testified that she and the other employees with whom she worked filed many grievances about Caterpillar's newspaper advertisements. But she did not recall whether she filed such a grievance on the night of March 3. Bray was not asked whether she knew if other employees had filed grievances that night.

40 Bray was not asked whether Coffey had ever said that grievances concerning the advertisements were "bunk" or "frivolous" or whether Coffey had otherwise deprecated in any way employee complaints and grievances on the subject.

45 I note that Bray's testimony about the Syfert-Coffey incident began with this question by the General Counsel: "do you recall an incident on break involving Mr. Coffey?" That is significant because Coffey testified that the incident did not occur on a break; rather, it happened just before quitting time. Counsel for the General Counsel, that is to say, led Bray to testify that the incident occurred during a break.

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<sup>33</sup> Union Reply Brief at 12-13.

*Coffey's Testimony*

5 Coffey acknowledged that in February he told Syfert that Syfert was taking excessive time on repetitive grievances. But Coffey denied ever complaining to Syfert about employee grievances aimed at Caterpillar advertisements.

10 As for the time of day, according to Coffey the mold board incident took place at about 7 a.m. (on the morning of March 4). It was at that time, said Coffey, that Superintendent Dave Mooney came over to Coffey's desk and spoke to Coffey about the words "Strike April 21" chalked on the mold board. Mooney, as a superintendent, is one level higher in Caterpillar's hierarchy than Coffey. Mooney told Coffey that Operations Manager Lee Madvig (Mooney's boss) wanted those words removed from the mold board.

15 Coffey testified that he saw Syfert standing near some employee lockers, not doing anything in particular. (Coffey's testimony places Syfert considerably farther away from Coffey than does the testimony of both Bray and Syfert.) None of the other six or seven other employees who work in the general area were there at the time. (That includes, specifically, Bray.) With quitting time (7:18) so close at hand, the employees may have been washing up, Coffey speculated. But, he testified, he did not know where they were. So with Mooney still standing next to the desk, Coffey "hollered at George and motioned for him to come over" (to quote Coffey). Syfert did come to Coffey's desk. Coffey thereupon told Syfert to get a rag and erase the chalked words on the mold board.

25 According to Coffey, Syfert did not say anything in response, nothing at all. Instead, Syfert merely carried out Coffey's instructions. It took Syfert two or three minutes to complete the task, including the time it took to walk over to the mold board.

30 Coffey testified that there is nothing unusual about a production employee being asked to do some cleaning outside the employee's own work area.

35 Coffey was Caterpillar's only witness about the mold board incident. I consider it peculiar that Caterpillar did not put Mooney on the witness stand. He could have testified about the time of the incident (which is in dispute), and he could have testified about whether Syfert was in fact the only employee in the area (a crucial issue very much in dispute). Additionally Mooney could have confirmed that Coffey's directive to Syfert did in fact immediately follow Mooney's directive to Coffey. Caterpillar does not claim that Mooney was unavailable at the time of the hearing, nor does Caterpillar claim that at the time of the hearing Mooney was no longer employed by Caterpillar as a supervisor.

40 *The March 11 Grievance*

45 During the time period at issue Allan Rueff worked near Syfert, and Syfert was Rueff's steward. (According to Bray, Rueff was one of the employees who was taking his break with Syfert and Bray when the Syfert-Coffey incident began.) On March 11 Rueff, as the aggrieved, and Syfert, as Rueff's steward, presented a grievance contending that "on 3-3-94 at 7:00 A.M. . . . Foreman Coffey . . . walk[ed] by other people just to get a Union Steward [Syfert] to remove" the writing on the mold board. (Caterpillar introduced the grievance into the record.)<sup>34</sup>

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<sup>34</sup> Rsp. Exh. 1006. Note that the grievance states that the incident occurred during the morning of March 3, rather than March 4. But since the shift began on March 3, the mistake is an understandable one.

5 The grievance supports Syfert's version of the incident to the extent that it claims that Coffey walked past other employees en route to assigning the cleaning task to Syfert. On the other, hand it contradicts Syfert's contention that the event could not have occurred as late as 7 a.m.

### *Other Evidence*

10 In the course of cross-examination counsel for the Union asked Coffey why he did not simply go over to the mold board and personally wipe off the lettering. Coffey responded that he would have improperly been engaging in bargaining unit work had he done so. No evidence refutes that response.

15 The Union seems to contend that there is something suspicious about the fact that Coffey did not call on the plant's janitorial staff to wipe off the mold board. But production employees often perform minor cleaning chores. And it would have been grotesquely inefficient for Coffey to have taken the time to telephone for janitorial help and for a janitor to have spent the time to journey to Coffey's area, all to erase 13 letters written in chalk. In this connection I note that Rueff's grievance claims that Coffey should have had an employee assigned to Department 8160 clean the mold Board. It does not contend that Coffey should have called on a janitor to do it.

25 At a labor relations meeting on February 28, Coffey and other first-line supervisors were ordered to keep records of grievance filings. The Union argues that this instruction evidences management's hostility toward grievance filings. Given the Union's in-plant campaign, management efforts to keep track of trends in grievance filings seem only prudent. Still, that record-keeping order, and the probable mindset that it reflects, should not be ignored in determining whether the record supports the General Counsel's allegations.<sup>35</sup>

### C. SYFERT AND COFFEY – CONCLUSION

30 I find that the General Counsel failed to prove either: (1) that Coffey said anything critical to any of the employees when, during the shift that began on March 3, employees complained to Coffey about the March 3 Caterpillar advertisement; or (2) that any employee filed a grievance on that shift about the advertisement.

35 As for the incident itself, it is more likely than not that it occurred about 5:15 a.m. on March 4. Mooney told Coffey to have the words on the mold board erased. Coffey knew that the erasing job was a trivial one that would take only a couple minutes to complete. Without thinking much about it, Coffey looked for a nearby employee to handle the task. Syfert happened to be closest. Coffey selected Syfert for that reason, not because Syfert is a union steward or because of any other protected activity on Syfert's part. Coffey told Syfert to grab a rag and follow him. They went over to the mold Board. Coffey told Syfert to erase the chalked words. Syfert complained briefly but then did as he was ordered.

45 Had Coffey not ordered Syfert to erase the chalked message from the mold board, Sy-

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<sup>35</sup> The Union points to an exhibit that it introduced (Exh. 1001) that shows that the number of grievances that went to the third step declined in 1992 and 1993 compared to the last year before the in-plant campaign began (1991). But since the exhibit is limited to grievances that went to the third step, I find it unhelpful.

5 fert would instead have spent the time working at his usual assigned job.<sup>36</sup> It is unlikely that this erasing task was more onerous than Syfert's usual work. In some circumstances, of course, employees might reasonably see as demeaning an order to put aside one's usual work and instead undertake a trivial cleaning job. But the record fails to show that such circumstances obtained here.

10 Lastly, I find that the record fails to show that Coffey, in addressing Syfert, said anything like, "if you hadn't filed so many trivial grievances, you wouldn't be asked to do this."

10 I shall accordingly recommend that the Board dismiss the complaint in Case No. 33-CA-10743.

### REMEDY

15 The recommended order imposes the usual remedy in cases such as this, with one exception: it includes a broad remedial provision. See *Caterpillar, Inc.*, 322 NLRB No. 116 (slip op. at 2 (Dec. 10, 1996)).

### ORDER<sup>37</sup>

20 The Respondent, Caterpillar Inc., its officers, agents, successors, and assigns, shall

1. Cease and desist from

25 (a) Singling out union officials for physically or verbally provocative conduct by supervisors.

30 (b) Discriminatorily requiring any employee to remove union materials from Company property.

(c) In any other manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

35 2. Take the following affirmative action necessary to effectuate the policies of the Act.

40 (a) Within 14 days after service by the Region, post at its facility in Decatur, Illinois, copies of the attached notice marked "Appendix."<sup>38</sup> Copies of the notice, on forms provided by the Regional Director for Region 33, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. The Respon-

45 <sup>36</sup> As a steward, Syfert kept track of employees' overtime hours. (He did so on the clock, during working time.) Syfert's testimony indicates that he was about to start on these record-keeping duties when Coffey ordered him to erase the message on the mold board. But no one contends that Syfert was thereby prevented from accomplishing his record keeping in timely fashion.

<sup>37</sup> If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

<sup>38</sup> If this Order is enforced by a Judgment of the United States Court of Appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."



## APPENDIX

## NOTICE TO EMPLOYEES

5

Posted by Order of the  
National Labor Relations Board  
An Agency of the United States Government

10

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT single out union officials for physically or verbally provocative conduct by supervisors.

15

WE WILL NOT discriminatorily require you to remove union materials from company property.

WE WILL NOT in any other manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

20

Caterpillar, Inc.

25

\_\_\_\_\_  
(Employer)

Dated \_\_\_\_\_

By

\_\_\_\_\_  
(Representative) (Title)

30

35

40

This is an official notice and must not be defaced by anyone.

45

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered with any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 300 Hamilton Boulevard, Suite 200, Peoria, Illinois 61602-1246, Telephone (309) 671-7068.

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

5 WE WILL NOT single out union officials for physically or verbally provocative conduct by supervisors.

WE WILL NOT discriminatorily require you to remove union materials from company property.

10 WE WILL NOT in any other manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

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Caterpillar, Inc.

\_\_\_\_\_  
(Employer)

20

Dated \_\_\_\_\_

By

\_\_\_\_\_  
(Representative) (Title)

25

30

35

300 Hamilton Boulevard, Suite 200, Peoria, Illinois 61602-1246, Telephone (309) 671-7068.

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